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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,654	05/01/2001	Jonathan Richard Clare	8539	4546

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EXAMINER

HARDEE, JOHN R

ART UNIT PAPER NUMBER

1751

DATE MAILED: 02/07/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/846,654

Applicant(s)

CLARE, JONATHAN RICHARD

Examiner

John R Hardee

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. Claims 1-13 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 97/34987. The reference discloses built automatic dishwashing compositions comprising about 0.01% to about 5% of a blooming perfume composition in which at least about 50% of the ingredients of the blooming perfume composition are blooming perfume ingredients having a boiling point of less than about 260 degrees C and a C log P of at least about 3. The compositions most preferably comprise at least 8 different blooming perfume ingredients, as well as a bleach, about 10-75% of a builder and adjunct materials such as enzymes, surfactants, chelants and mixtures of same (p. 4, lines 6-24). The compositions may contain delayed blooming ingredients, which have a boiling point of about 260 degrees C or lower, a C log P of less than about 3, and blooming perfume ingredients are present in a ratio with the delayed blooming ingredients at a ratio of about 1 to 2 (p. 9, lines 4-19). Accordingly, the percentages recited in claims 2 and 5 can be met by following the teachings of the reference. Non-blooming perfume ingredients may be present, most preferably at 2-7% of the compositions (p. 10, lines 4-9). Suitable blooming ingredients, delayed blooming ingredients and non-blooming ingredients are disclosed in Tables 1-3, respectively, and a number of the specific ingredients read on those recited by applicant. A number of the non-blooming ingredients of Table 3 are the same as the base masking ingredients recited by applicant. Use of organic peroxides, especially diacyl peroxides, is disclosed at p. 40, line 7. The word "especially" appears to imply that diacyl peroxides are preferred ingredients. Dibenzoyl peroxide is used in several of the examples. Use of the compositions is disclosed (p. 60, lines 3-5, claim 11). The compositions may be liquids

(p. 1, line 13). The reference does not teach the water content recited by applicant, but the examiner takes the position that this limitation will be met upon dilution of the composition in an automatic dishwasher in the course of normal use. This reference differs from the claimed subject matter in that it does not disclose a composition which reads on applicant's claims with sufficient specificity to constitute anticipation.

It would have been obvious at the time the invention was made to make such a composition, because this reference teaches that all of the ingredients recited by applicants are suitable for inclusion in an automatic dishwashing composition. The person of ordinary skill in the surfactant art would expect the recited compositions to have properties similar to those compositions which are exemplified, absent a showing to the contrary.

In the case where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed Cir. 1990).

5. Claims 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 97/34987 in view of Painter et al., US 5,763,378. The PCT reference is summarized above. The particle size of the diacyl peroxide or dibenzoyl peroxide is not disclosed.

Painter et al. teaches a process for making composite particulates comprising water-insoluble diacyl peroxide having a mean particle size of less than 300 microns (abstract). These particulates are particularly useful in automatic dishwashing detergents (col. 1, lines 10+). The particles are more preferably about 1-150 microns

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and most preferably about 10-100 microns (col. 4, lines 14-16). The preferred diacyl peroxide is dibenzoyl peroxide (col. 4, lines 30-31). It would have been obvious at the time the invention was made to incorporate the particulate peroxide compositions of Painter et al. into the automatic dishwashing detergents of the WO, because the WO discloses that diacyl peroxides may be used therein, and Painter et al. teaches at col. 4, lines 45+ that use of diacyl peroxide particles of the size taught therein is important for controlling residue formation and maximizing stain removal performance.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (703) 305-5599. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (703) 308-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.



John R. Hardee
Primary Examiner
February 4, 2003